



Insurance Department

State of Utah

GARY R. HERBERT

Governor

GREG BELL

Lieutenant Governor

TODD E. KISER

Acting Commissioner

State of Utah Title and Escrow Commission Meeting Meeting Information

Date: August 19, 2013

Time: 9:00 AM

Place: East Bldg, Spruce Room

MEMBERS

(Attendees=x)

COMMISSION MEMBERS

xChair, Kirk Donald Smith, *Weber Cnty*

xMatthew Blaine Sager, *Maricopa Cnty, AZ*

xCo-Chair, Larry Turner Blake, *Washington Cnty*

Sylvia Skinner Andersen, *Public Member*

xJeffery Donald Wiener, *Salt Lake Cnty*

DEPARTMENT STAFF

xPerri Babalis, *AG Counsel*

xBrett Barratt, *Deputy Comm.*

Mark Kleinfeld, *ALJ*

Suzette Green-Wright, *MC Dir.*

xAdam Martin, *Examiner*

Jilene Whitby, *PIO Recorder*

Tracy Klausmeier, *P&C Director*

Tammy Greening, *Examiner*

MEMBERS OF PUBLIC

David Moore

Carol Yamamoto

Russ Nance

Roy Poll

Blake Heiner

Jim Johnson

Mike Smith

Pete Stevens

MINUTES

General Session: (Open to the Public)

- **Welcome / Kirk Smith, Chair**

At 9:08am Kirk began the meeting and welcomed attendees.

- **Adopt Minutes of Previous Meeting**

- Kirk asked Commission members to send their contact information to the Department so it can be updated.
- The end of the first sentence under the subheading of "Elect Chair & Co-Chair" of the heading "New" should end with "Sylvia's" name. Larry then made a **motion** to approve the minutes with this change, Jeff seconded it and the vote was unanimous.

- **Reports**

- **Concur with Licensee Report / Adam**

Kirk asked why there were so many lapses in July. Adam said it is generally due to bad email addresses. Renewal notices are sent out 75 days prior to renewal date. Larry made a **motion** to approve the report, Matt seconded it and the vote was unanimous.

- **Concur with Complaint & Enforcement Reports for July / Adam**

Jeff made a **motion** to concur with the Enforcement report, Larry seconded it and the vote was unanimous.

- **Request for Dual Licensee Expedited Request: None**

- **Request for Attorney Exemption: None**

- **Administrative Proceedings Action / ALJ**

- **Stipulation & Order: None**

- **Request for a Hearing: None**

- **Order to Show Cause: None**

- **Informal Adjudicative Proceeding & Order: None**

- **Formal Adjudicative Proceeding: None**

- **Old Business**

- **Discuss Proposed Rule Amendments to [R592-2-7\(2\)](#) / Perri**

- A handout was provided including changes made by Matt and Jeff as well as Perri's previous changes. Matt reviewed them, noting that a number of the changes deal with consistency in capitalization and terms.
- The focus is on informal proceedings making lapsed licenses an informal proceeding up to 180 days. After that it would be a formal proceeding. Adam said he contacts all those whose license has lapsed and investigates the number of transactions conducted during the lapse period. Larry thought 180 days was too long considering contact Adam makes. Roy said the State Bar allows 180 days after a lapsed license before significant enforcement action is taken. Adam said this was consistent with what they do with producers in other lines.
- Adam noted that after he sends a letter notifying individuals or agencies of their lapse license that most respond immediately to renew their license. Letters are sent out a month after the license lapses.
- Discussed issue of losing designations and appointments when a license lapses. There needs to be a better way of re-appointing and re-designating after the license is renewed. Discussed possibility of a 30 day grace period in which designations and appointments are not deleted. Dave noted that Michael Covington said this would need to be worked out with SIRCON.
- The fine was then discussed. Matt said those who reinstate immediately still have to pay a fine. Larry said the fine should also be based on the number of closings performed during lapse. Larry suggested increasing the fine after 30 days and going to formal proceeding after 60 days. Fine would be:
 - 0-30 days lapse = \$100 individual / \$300 agency
 - 30-60 days lapse = \$250 individual / \$2,000 agency

The Commission liked this. Roy said the Bar had a \$100 fine that does not include penalty for cases worked. Matt clarified that the fine would not be increased for closings made during first 60 days. Only after 60 days when Department started a formal investigation. Several agreed that there should be a set schedule for fines. One person said there seemed to be too much focus on minor infractions or "low hanging fruit" and not enough on serious violations.
- Pete said the law requires a license to sell, solicit and negotiate insurance. Law is for all licensees, including title. **Perri was asked to see that these changes were consistent with the code.**
- Kirk asked if proposed shortening of time periods were consistent with other lines of insurance. Adam said they were not and that Pete's statement was accurate.
- Jeff asked why they had not been shown the informal Matrix. **Brett committed to show the matrix to the Commission at the next meeting.** Adam noted that there are other considerations in determining a fine, such as mitigating circumstances. Larry said he wanted to understand the Matrix and liked the proposed flat rate amounts for the first 60 days.
- Roy suggested paying an extra renewal fee to avoid adjudicative proceeding when it is just a late renewal.
- Brett said the Department is required to give "due process" if an informal fine is not agreed to. It was noted that Rule R590-160-4 and R592-2-6, allow for transition from informal to formal if requested.
- Underwriter liability for actions of their producers or agencies was discussed. There was concern that they would not be liable if the license had lapsed. It was noted that they would be responsible as per 31A-23a-407.
- Larry emphasized that the changes to the rule are to streamlining lapses in an informal proceeding as opposed to a formal proceeding.

- Jeff clarified that there are no hearings for informal actions under 31A-2-404(2)(e). Hearings only occur under formal actions.
- It was clarified that under 31A-2-404(2)(g) a penalty has to be imposed by the Commission via a formal proceeding. Informal proceedings use the Matrix to determine forfeiture.
- Perri reviewed the current administrative proceeding process relative to Stipulations and Orders. Jeff asked what happened if Department made a recommendation to the Commission that was not concurred with. What can the Department do? Perri said all options are open to the Department.
- Further discussion was had regarding the process under R592-2-8.
- Regarding R592-2-7(2)(b): Pete thought the Department had final review rights. Brett said the law states that the Title Commission imposes the penalty.
- More discussion was needed regarding the 30, 60 and 90 day lapse, as well as steps to clarify the process. Larry made a **motion** to discuss this matter next month, Matt seconded it and the vote was unanimous.
- **Discuss Issue of Providing Lenders with Disbursement Schedules, Canceled Checks and Access to all Records, Post Closing: Including Feedback from ULTA / Larry**
 - Representative from the ULTA was not present. Last month we were told that CFPB would be coming up with a resolution in September to the disbursement of checks and disclosing of those issues. They are in the process of preparing a letter on the search piece and one solution has been proposed regarding the NPI and the escrow agreement being signed by all parties allowing information to be shared. This is starting to be circulated but is not yet formalized.
 - Larry emphasized that changes could not be made to escrow instructions. Either you violate them or not. Changes need to be made to split closings. They should not be done as cash transaction.
 - Discussed fiduciary obligations of split closings and “sub-escrow” instructions from lenders.
 - Larry asked that this be put on next month’s Old Business.
- **New Bulletin Re: [31A-19a-209\(3\)](#) and [R592-15-7](#) Requiring Rates & Charges to not be Less than Cost of Doing Insurance or Escrow Business / Brett**
 - Draft bulletin provided to attendees.
 - Relevant statute and rule are 31A-19a-209(3) and R592-15-7. They state that you cannot do escrow services at a loss.
 - Subsection 31A-19a-209(3) says that neither title nor escrow business can operate at a loss.
 - Larry made a **motion** to approve the bulletin and send it out. It is a reiteration of the statute. No second.
 - Blake asked when the Department had last done an audit of a title company to see if their rates were at or above their cost of doing business and had done an investigation regarding controlled business issues. Kirk said Tammy had told them that she had rejected rate filings. Blake said there had been no enforcement by the Department on these two issues in 20 years. Matt said the purpose of the bulletin was to put these issues on the Department’s radar screen. The Commission and title industry wanted the bulletin.
 - David asked: “If the annual report shows a loss, does that mean the rates are too low or is it a market fluctuation? Pete asked if they could just come up with a calculation to show the elements of an escrow and range of fees. Burden should not be on the Department.

- Larry's **motion** failed. Jeff made the **motion** that Brett clarify in the bulletin that each line, title and escrow, operate independently and not at a loss. Matt seconded the motion and the vote was unanimous.
- **New Business**
Larry would like to put back on New Business the issue of when a license is required to do a title search. Matt noted that the license is required to provide the commitment for the policy. He did not think further clarification was needed. Clarification may limit our apprenticeship industry. Larry said language was needed to strengthen and clarify the code in delineating whether a license is needed to do a search. Brett noted this could be done statutorily or by bulletin providing Department's interpretation. **Motion** by Larry to **put on September's agenda**, seconded by Jeff and the vote was unanimous.
- **Other Business**
Brett said Department needed to have their bill ready to present to the Legislature sometime in September. If there are any changes that need to be added, give them to the Department before then.

Executive Session (None)

- **Adjourn:** **Motion** to adjourn by Kirk and seconded by Jeff.
- **Next Meeting:** September 9, Spruce Room

2013 Meeting Schedule in Spruce Room
(2nd Monday except holidays, then 3rd Monday)

Jan 14	Feb 11	Mar 11	Apr 8	May 13	June 10
July 8	Aug 12	Sep 9	Oct 21	Nov 18	Dec 9